IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4719 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MINOR DHAIVAT C PARIKH,THRO' CHANDRAKANT M PARIKH - Appellant(s)
Versus
VADILAL DAIRY PRODUCT & 1 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
MR YN RAVANI for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/02/2007

ORAL JUDGMENT

1. The original claimant has approached this Court to seek enhancement in compensation awarded by Motor

Accident Claims Tribunal, Ahmedabad vide judgment and award dated 23rd August, 1996 made in MACP No. 178 of 1989. By the said judgment, the appellant has been granted compensation of Rs.42,070=00 together with running interest at the rate of 12% per annum from the date of the petition till realization and the proportionate costs. The claim made in the petition was Rs. 1 lakh. In this appeal, an additional sum of Rs.50,000=00 is claimed.

2. The minor aged 7 years received injuries since he was knocked down by the vehicle i.e. Matadoor bearing registration no. GRX 5763 by original opponent no. 1 who was deleted by order passed below Exh. 22. The vehicle was owned by original opponent no. 2 and now respondent no. 1. It was insured with respondent no. 2 – New India Assurance Co. Ltd. The accident occurred on 11th February, 1989. On that day while the victim was trying to cross the road, the driver of the offending vehicle came from the side plot no. 18 carrying Milk in the vehicle. He drove the vehicle in a negligent manner and knocked down the minor. As a result of which, he fell on the road. The right side wheel of the vehicle ran over the right leg of the minor. He received serious injuries. He was hospitalized and he was treated as indoor patient at Alap

Hospital. He remained there for ten days i.e., from 12th February, 1989 till 22nd February, 1989, during which the operation was performed. He was again hospitalized from 6th October, 1990 and he was kept as indoor patient till 15th October, 1990, during which the second operation was performed. In view of the same, petition under the provisions of Motor Vehicles Act, was filed by his father Chandrakant M Parikh, next friend and guardian of the minor. In the petition claim of Rs.1 lakh was made.

3. The claim was resisted by respondents no. 1 and 2 by filing written statement at Exh. 15 and 21 respectively. According to them, there was no negligence on the part of the driver of the vehicle and it occurred solely due to negligence of the minor. It was further contended that the minor was liable for contributory negligence.

4. On the basis of the material produced before it the Tribunal held that it was the driver of the offending vehicle who was solely responsible for causing the accident. The Tribunal assessed the quantum of compensation and awarded Rs.42,070=00 with interest and costs as stated above. Being dissatisfied with the quantum of compensation this appeal is filed for its

enhancement.

5. I have heard Mr. Hemant Shah learned advocate for the appellant and Mr. Ravani learned advocate for the respondent. Mr. Shah has submitted that considering the facts and circumstances of the case, the award of the Tribunal is inadequate and it is required to be modified. He has submitted that considering the medical evidence and the injuries received by the minor, he deserves to have compensation of Rs.15,000=00 under the head of pain, shock, and suffering as also for medical expenses Rs.10,000=00. He has further submitted that the Tribunal ought to have determined the loss of prospective income by taking monthly income of the minor at Rs.1,000=00. According to him even under the head of attendant and transportation charges, the amount awarded by the Tribunal is inadequate. He has further submitted that the Tribunal has wrongly deducted the amount received by the father of the minor i.e., the amount received towards the reimbursement of medical expenses. To substantiate his say he has placed reliance on the decision rendered by the Division Bench of this Court in the case of **Satishkumar Rasiklal Doctor v. Baldevbhai Chhaganbhai Thakore** reported in First Appeal No. 7715 of 1999 dated 18th August, 2006. Mr. Shah has also made grievance

regarding multiplier applied by the Tribunal. As against that Mr. Ravani has submitted that the Tribunal has properly assessed the quantum and there is no need to enhance it. According to him, considering the age of the boy, the Tribunal ought to have taken his income to be Rs.400=00 per month. He has further submitted that the multiplier applied by the Tribunal is proper. According to him, there is no merit in this appeal and hence it deserves to be dismissed.

6. I have carefully considered the submissions of the learned advocates. I have also closely perused the record and proceedings of the case. So far as the accident is concerned, there is no dispute. There is also no dispute with the minor receiving serious injuries to his right leg in this accident. The issue of negligence has been decided by the Tribunal against the driver and the present respondent. There is no appeal filed by them nor any cross objections. Hence, the said issue stands finally concluded. I have perused the discussion of the Tribunal on this issue and I find that it is just and proper and no interference is required. Hence, I confirmed the finding given by the Tribunal on the issue of negligence. So far as the quantum of compensation is concerned, the Tribunal has awarded :

Rs.10,000=00 for pain, shock and suffering

Rs. 3,700=00 for medical expenses

Rs. 2,500=00 for transportation charges.

Rs. 3,850=00 attendant charges

Rs.20,520=00 for future loss of income.

6.1. Considering the age of minor i.e., seven years, the Tribunal has applied the multiplier of 15.

7. The evidence shows that the minor was knocked down by the vehicle. He fell on the right side and the right side front wheel of the vehicle ran over his leg causing serious injuries to it. As a result of the same, he had to remain in the hospital initially for ten days i.e., from 12th February, 1989 to 22nd February, 1989. During his hospitalization he was operated upon by Dr. Vikki J. Parikh, Orthopedic Surgeon who has issued certificate which is at Exh. 32. It shows that the minor had sustained compound fracture and his leg was considerably damaged. The first operation was carried out during his initial hospitalization and the second was carried out when he was hospitalized during the period between 6th October, 1990 and 15th October, 1990. It also appears that he was operated upon even third time, but

the details are not found on record. There was skin grafting done. Dr. P.K. Bilwani issued certificate at Exh. 60 in whose hospital the minor was admitted from 6th October, 1990 till 15th October, 1990. His skin grafting was done on 6th October, 1990 under general anesthesia. Dr. Aditya J. Upadhyay has also issued certificate which is produced at Exh. 54. Dr. Upadhyay gave his evidence which is at Exh. 53. He had examined the victim on 28th September, 1995. He has in detail noted down the effects and the facts of the injures on the limb in his certificate, which is dated 28th September, 1995. According to him, there was considerably restriction on the movement of the leg. He assessed the disability of the limb at 38%. It was considered at 19% in respect of the entire body. In view of the aforesaid and also keeping in view that the victim was a boy aged seven years there is no difficulty to presume that he might have suffered enormous pain and discomfort. At such a tendered age to receive such injuries would have also caused tremendous shock. In view of the same, the compensation awarded under this head i.e. Rs.10,000=00, by the Tribunal appears to be inadequate and it is required to be enhanced to Rs.15,000=00. The appellant is, therefore, granted additional compensation of Rs.5,000=00 under the head of pain, shock and suffering.

8. So far another major head i.e., loss of future income is concerned, the Tribunal has taken the income of the minor at Rs.600=00 per month and has assessed the compensation under the said head on the basis of the said income by applying the multiplier of 15. According to Mr. Shah, the Tribunal ought to have taken the income of the minor at Rs.1,000=00 per month, whereas according to Mr. Ravani it ought to have been Rs.400=00 per month. In support of his say, Mr. Ravani has relied on the decision rendered by the Division Bench of this Court in the case of **Kantibhai Valabhai Patel & Ors., v. Minor Pravin Nathubhai reported in AIR 1996 Guj. 130**. The victim of that case was a boy aged seven years. The Tribunal had assessed his income at Rs.1,000=00 per month and had determined the compensation under the head of loss of prospective income on the said basis. There the multiplier of 16 was applied and the disability was 70%. The Tribunal had awarded Rs. 1,34,000=00 under the head of future loss of income which was held to be on higher side by this Court and it was reduced to Rs.80,000=00. It appears that the Court had taken the monthly income of the minor at Rs.700=00. In the said judgment, neither the date of the accident nor monthly income determined by this Court is stated, but the decision was rendered in

First Appeal No. 902 of 2990 which would mean that the accident in that case had taken place much prior to the date of the accident in the present case. The second decision relied on by Mr. Ravani is rendered by the Division Bench of this Court in the case of **Gujarat state Road Transport Corporation & Another v. Minor Prakash Maganbhai Padhiyar reported in 2003 (2) GLR pg.1334**. In that case, the minor boy aged about eight years had suffered serious injuries on his left leg which was amputated above the knee. The Tribunal has assessed his income at Rs.400=00 and applied multiplier of 20 and had awarded Rs.96,000=00 towards future loss of income. The award was challenged by ST Corporation which was dismissed.

9. Mr. Ravani has submitted that in the said judgment the Tribunal's finding regarding income of the minor has been confirmed by this Court. However, Mr. Ravani has misread the observations made by this Court. In the said judgment, in the opinion of the Court the income of the minor who was agricultural labourer could have been assessed at Rs.600=00 per month. In that case the accident had occurred on 7th October, 1984. In the present case it has occurred on 11th February, 1989 i.e., almost 5 years later. Considering these facts, it clearly appears that this decision not only, does not help the

respondent insurance company but on the contrary it helps the appellant. Keeping in view this decision as well as the fact that the accident in question had occurred much later, it would be just and proper to determine the income of the minor at Rs.850=00 per month. The Tribunal has awarded compensation under the head of loss of prospective income by taking the income at Rs.600=00 per month, which is on lower side. If taking the income at Rs.850=00, the monthly loss would work out to Rs.162=00. Since there is disability of 19%, the annual loss would be Rs.1,944=00. So far as the multiplier is concerned, 17 appears to be proper multiplier. Therefore, the loss of future income would be Rs.33,048=00. He has already been awarded Rs.20,520=00 under the said head of future loss of income. So far as the medical expenses are concerned, the Tribunal has awarded Rs.3,700=00 against the claim of Rs.10,000=00. The Tribunal has held that since the father of the minor who has filed this appeal received reimbursement of Rs.10,000=00, that amount has been deducted. This is not correct and legal approach. It is well settled proposition of law that the collateral benefit received by the claimant should not be a matter of advantage to the tortfeasor. Same principle has been reiterated in the decision of the Division Bench of this Court in First Appeal No,. 7715 of 1999 dated 18th August, 2006 in the case of Satishkumar Rasiklal Doctor v. Baldevbhai Chhaganbhai Thakore (supra). Therefore, under

the said head additional sum of Rs.10,000 is required to be awarded. So far as the transportation and attendant charges are concerned, I do not see any case to interfere with. Thus, in all the appellant is entitled to receive additional compensation of Rs.27,528=00 together with interest and costs as determined by the Tribunal.

10. In the result, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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